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Remarks/Arguments

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***Procedural History***

Prior to entry of this paper, the following claims were pending: 17 – 36. In this paper, claims 17, 18, 26 and 36 have been amended; no new claims have been added.

After entry of this paper, claims 17 – 36 are now pending. Because the most recent office action is final, the applicant files a request for continued examination with this paper.

***Claim objections under 35 USC § 112***

1. With respect to the Examiner's rejection under 35 USC § 112, for lack of enablement of "short codes," the applicant responds that short codes were well known at the time this application was filed. Please see the NeuStar press release, dated October 21, 2003, which discusses NeuStar's appointment as the administrator of a cross-carrier short code registry (prior to that time, short codes had been available for use, but the same short codes would not necessarily be routed the same way by different carriers). Please also see the "Common Short Code FAQs," also provided with this paper and which describes short codes on the bottom of the first page and "common short codes" on the bottom of the first page and onto the second page. In essence, short codes are similar to a truncated phone number to which one or more text (or EMS or MMS) messages may be sent. Text (or EMS or MMS) messages may be sent to a phone number or a short code, while phone calls may be placed to a phone number. Short codes are commonly used in the context of text-chat services (such as an SMS based dating service). Similar to certain telephone numbers which respect to which carriers charge extra fees (a portion of such extra fees sometimes being shared with the licensor of the telephone number), a telecommunications service provider may charge additional fees for sending messages to certain short codes (a portion of which fees may then be shared with the party who licenses the short code from the carrier). Short codes were (and are) an inherent alternative to using a telephone number to send a text (or EMS or MMS) message.
2. With respect to claim 27 and lack of enablement for "an automated telephone response system," figures 4, 5, and 6 recite a step of "Accept Charge Prompt" and paragraph 36 of the specification, second sentence, recites, "The service provider in response plays an accept charge prompt to the cellular caller, which may be, for example, an automated message." The applicant asserts that an "automated telephone response system" is inherent in or disclosed by this material.
3. In response to the Examiner's objection in paragraph 3, "the offer" has been amended to read "an offer" in claim 17 and 26 and claim 18 has been amended to "a provider."

***Claim objections under 35 USC § 102(b); anticipation by Kumar***

4. The Examiner rejected claims 17 – 36 based on Kumar (US Publ. No. 2002/0143634 A1).

With all due respect to the Examiner, Kumar does not teach "sending SMS message(s) to the would-be-purchaser containing a short code and/or a telephone number through which the would-be-purchaser may obtain the goods and/or services."

The Examiner appears to have found a short code to be equivalent to a PIN. However, and as stated above, a short code is a form of truncated telephone number to which SMS messages may be sent. The would-be-purchaser of the present application who is in receipt of a short code or telephone number may then send text messages to either the short code or the telephone number or the would-be-purchaser may call the telephone number. Sending text messages to a short code or telephone number or calling a telephone number in the present application is how the would-be-customer obtains the goods or services. An example of such goods or services includes a voice- or text-based chat room, such as a dating chat room. The PIN discussed in Kumar is a customer's PIN which is used to confirm a payment transaction between a customer and a bank or another payment processing center. The PIN in Kumar is not equivalent to the short code or telephone number in the present application.

To the extent that the present application claims a PIN, as in claim 23, the PIN is not sent by the customer and to a bank or other payment processing center, as described in Kumar; in the present application, the PIN is sent to the would-be-purchaser by the provider of goods and/or services or an agent for such a provider. The PIN of the present application may then be used, in combination with the short code or telephone number, to access the goods and/or services. For example, short codes and/or telephone numbers may be expensive to acquire and administer; by requiring a PIN in combination with a short code or telephone number, the service provider may effectively sub-divide use of the short code or telephone number among different user populations, routing the communications to different services based on the PIN number. One PIN number, for example, may indicate "man seeking woman" in the dating-chat example, while another PIN number may indicate "man seeking man" or "woman seeking man," etc.

The would-be-purchase may send the PIN to the provider of goods and/or services in the course of accessing the goods and/or services, but even such a transmission of a PIN by the would-be-purchaser is not to a bank or other payment processing center. The PIN/short code and/or telephone number of the present claims is simply unrelated to confirmation of a payment transaction

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Remarks/Arguments -- Continued

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or account access, as it is used in Kumar. Payment in the present application is accomplished through charges levied by a telecommunications service provider (charges levied for use of the short code and/or telephone number sent to the would-be-purchaser) and through revenue share with the telecommunications service provider. No bank account or other account access is required or claimed in this application. A would-be-purchaser may avail him or herself of the use of the disclosed method and/or system with access to only an SMS enabled telephone a corresponding relationship with a telecommunications service provider, which is a significant benefit of the disclosed invention. This difference is addressed more fully, below.

Claims 24 and 25 contain further limitations not addressed by the Examiner or by Kumar, in which the PIN of the present application is associated with a period of time acquired by the would-be-purchaser and in which the PIN is sent to a third party provider of the goods and/or services.

The Examiner also asserts that Kumar teaches, "receiving from a telecommunications service provider an amount related to an amount billed by the telecommunications service provider to the would-be-purchaser for use of the short code and/or a specialty purpose telephone number." With all due respect, the Examiner is mistaken on this point. Kumar simply does not discuss this form of obtaining compensation in any way. Use of this form of obtaining compensation is significant in that it enables financial transactions without use of a bank account; the would-be-purchaser need only have a relationship with a cell phone service provider (see, for example, paragraph 29 of the specification). Charges for the services obtained through use of the disclosed system appear on the telephone bill of the would-be-purchaser. The service provider shares some of this revenue with the party who operates the phone number or short code. The paragraphs cited by the Examiner simply do not relate to a mobile phone or telecommunications service provider who bills "the would-be-purchaser for use of the short code and/or a specialty purpose telephone number" nor a mobile phone or telecommunications service provider who provides a portion of such billed amount to anyone else. Kumar is addressed to a method and/or system in which charges are debited against a consumer's bank account and in which the transaction does not even proceed until confirmation is obtained that the bank account has sufficient funds. See for example, figure 3.B. in Kumar, step 348. The transactions in Kumar also require addition authentication and authorization steps to address utilization of a bank account.

The Examiner is simply mistaken on this point, perhaps related to the Examiner's misapprehension regarding the definition of "short code." The applicant hopes that the Examiner now understands the meaning of "short code" and that use of the short code or telephone number

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Remarks/Arguments -- Continued

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as claimed in this application results in charges which appear on a telephone bill, which charges result in revenue, which revenue may be shared to a certain extent between the provider of goods and/or services and the telecommunications service provider.

***Claim objections under 35 USC § 103(a); anticipation by Kumar in view of Official Notice***

5. The Examiner rejected claims 20 and 35 based on Kumar in view of Official Notice regarding duplication of parts. The Examiner states,

Kumar teaches all of the above as noted under the 102(b) rejection and teaches a) ordering goods or services, b) ordering services via SMS enabled mobile telephone, and c) services delivered via SMS enabled mobile telephone, but does not disclose sending subsequent confirmation SMS message(s) to obtain addition acceptance relative to a period of time subsequent to the first period of time (Please note: this is interpreted as repeating the steps required for the initial purchase in order to purchase additional allotments)."

With all due respect, the applicant notes that the Examiner is mistaken. The "steps required for the initial purchase" are not necessarily repeated, as noted by the Examiner's parenthetical. Because billing is accomplished through the use of a short code and/or telephone number to which addition service charges apply, it is not necessary to repeat all of the other steps. In fact, continued use of the short code and/or telephone number may itself constitute sufficient acceptance such that no subsequent confirmation messages are required at all, which is why this is a dependent claim. However, to the extent that additional affirmative confirmation may be desired or required, it is possible, as claimed here, to send a relatively short subsequent confirmation message, such as "Reply '1' for five more minutes." The would-be-purchaser may "Reply '1,'" to use the vernacular of this example, but may then not actually use the phone number or the short code further, in which case one outcome might be that the would-be-purchaser would not necessarily be billed further.

The use of designated short codes and/or telephone numbers to obtain services – where the billing for a product or service is handled through additional charges which appear on the would-be-purchaser's telephone bill for use of the designated short codes and/or telephone numbers – is one of the distinguishing features of this application relative to the art cited by the Examiner, perhaps one which escaped the Examiner previously due to misapprehension regarding the definition of "short code."

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Remarks/Arguments -- Continued

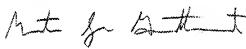
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***Double Patenting***

6. The Examiner raises a provisional rejection on the ground of nonstatutory double patenting over the claims in copending application No. 11/089843. The applicant is filing a terminal disclaimer in application No. 11/089843, which is the later filed of the two copending applications. The applicant believes that a terminal disclaimer filed in the later filed of the two copending applications should satisfy the Examiner's objection.

The applicant requests that the Examiner enter a request for continued examination and that the Examiner reconsider the claims in light of the information and arguments in this response. The applicant respectfully requests that the Examiner reconsider the grounds for rejection and that a notice of allowance be issued in this application.

Respectfully submitted,  
NEWMAN & NEWMAN

  
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